

United States District Court for the  
Western District of New York

His Tabernacle Family Church, Inc., and  
Michael Spencer,

Plaintiffs

**Affidavit**

vs.

**Steven A. Nigrelli, Acting Superintendent  
Of the New York State Police, in his official  
And individual capacities; Weeden A. Wetmore,  
District Attorney for the County of Chemung,  
New York, in his official and individual capacities;  
And Matthew Van Houten, District Attorney for  
The County of Tompkins, New York, in his official  
And individual capacities,**

Defendants

6:22-cv-06486-JLS

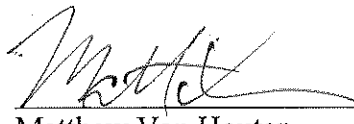
STATE OF NEW YORK     )  
COUNTY OF TOMPKINS    ) ss:  
CITY OF ITHACA            )

Matthew Van Houten, being duly sworn, states the following:

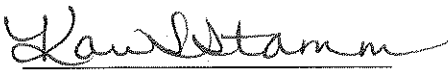
1. I am a defendant in the above-captioned proceeding.
2. I am the duly elected Tompkins County District Attorney.
3. I submit this affidavit in response to the plaintiffs' motion for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a).
4. As the chief prosecutor for Tompkins County, New York, I routinely exercise my discretion to determine which conduct to prosecute, sometimes on an individual basis and as a matter of policy in some broad categories of cases.
5. Upon my review of the provisions of New York State Penal Law Section 265.01-e(1), (2)(c), my determination was that the Tompkins County District Attorney's Office would not prosecute cases where a lawful gun owner was charged with possession of a firearm

in a church or place of worship so long as that individual was otherwise acting in a law-abiding manner.

6. I made the aforementioned policy decision well before the commencement of this action by the plaintiffs.
7. The plaintiffs' motion for a preliminary injunction seeks to enjoin me from doing something that would never have happened under any circumstances under the extant policy of my administration.
8. To reiterate, the Tompkins County District Attorney's Office will not prosecute individuals in Tompkins County for violations of Penal Law Section 265.01-e(1), 2(c) pursuant to the already existing policy established by the undersigned. And, of course, I am aware of the Order issued by this Court staying enforcement of this statute.
9. As the Court knows, I have not had anything to do with the promulgation of the statute under challenge, nor have I ever prosecuted any person under the statute now challenged. And it is plain I do not intend to prosecute anyone under the challenged statute in the future. I trust these facts will be considered in the event plaintiffs prevail in this case and seek reimbursement of attorneys' fees from defendants.

  
Matthew Van Houten  
Tompkins County District Attorney

Sworn to this 29 day of  
November, 2022

  
Notary Public

